

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
APPEAL NO. 07 (EZ) OF 2024
[IA No. 38 (EZ) OF 2024]

IN THE MATTER OF

Sanjaya Kumar Mishra

...APPELLANT

VERSUS

Ministry of Environment, Forest and Climate Change & Anr.

...RESPONDENTS

REJOINDER AFFIDAVIT

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Place: Balangir
Dated 28/11/2024

(FILED BY)

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Most respectfully, Sanjaya Kumar Mishra, Advocate, S/o Shri Nilamani Mishra, Maszid Chowk, Tikrapara, Balangir 767001 (Odisha), the Appellant, submit as follows in response to the reply affidavit filed by Ministry of Environment, Forest and Climate Change, Respondent No. 1 (hereinafter referred to as R/1) and another Respondent No. 2 (hereinafter referred to as R/2):

1. With respect to Points No. 6 to 10 in the Reply Affidavit filed by R/1, it is most respectfully submitted that the appellant had previously apprised the Hon'ble National Green Tribunal (hereinafter referred to as "Hon'ble NGT") that the initial filing of the present Appeal was effected on 05.04.2024, within the statutory 30-day period prescribed under the National Green Tribunal Act, 2010. However, the filing was inadvertently made before the Principal Bench of the Hon'ble NGT due to a bona fide jurisdictional misunderstanding. The jurisdictional confusion arose from the fact that the Appeal was instituted against the Ministry of Environment, Forest & Climate Change, through its Member Secretary, Expert Appraisal Committee for Coal Mine Projects, located in New Delhi. Owing to New Delhi being selected as the location, the Appeal was automatically directed to the Principal Bench of the Hon'ble NGT. During the scrutiny stage of the initial filing, the appellant was not informed or directed to file the Appeal before the Hon'ble Eastern Zone Bench. Consequently, a fresh filing became necessitated pursuant to a communication issued by the Hon'ble NGT on 25.04.2024. The relevant supporting documents substantiating the same have already been placed on record with IA No. 38/2024 (EZ).

The Hon'ble Supreme Court's judgment in Collector, Land Acquisition v. Katiji (1987) stressed the importance of adopting a liberal approach to condonation of delay.

Further, the Hon'ble Principal Bench of the NGT, in its recent Order in Appeal No. 5/2024 (IA No. 184/2024, IA No. 174/2024, IA No. 63/2024, IA No. 62/2024) titled Haryana State Pollution Control Board & Ors. v. M/s. Malibu Estate Pvt. Ltd. & Ors., uploaded on 20.11.2024, has extensively deliberated on the issue of condonation of delay. The Order references the judgment of the Hon'ble Supreme Court in *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai* (2012 5 SCC 157), which elaborated upon the expression "sufficient cause" under Section 5 of the Limitation Act. The Hon'ble Court held: "What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on the bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. Conversely, if the explanation is found to be concocted or if the applicant is thoroughly negligent in prosecuting his cause, it would be a legitimate exercise of discretion not to condone the delay."

In view of the foregoing, it is humbly submitted that the delay in filing the Appeal was caused by a bona fide and inadvertent jurisdictional oversight, and the same was neither intentional nor deliberate. The appellant has demonstrated due diligence and acted in the public interest, seeking to address issues of significant environmental concern.

Moreover, it is noteworthy that Respondent No. 2 (R/2), in its affidavit in opposition, has not raised any objections to the condonation of delay.

2. Between Points No. 11 to 23 of the Reply Affidavit, R/1 has merely reiterated the pre-appeal grievance stage communications and actions, which lack any new or substantive argumentation. Such repetition serves no constructive purpose and fails to address the Ground of the appeal.
3. At Paragraph No. 24 (Page 95), R/1 has alleged that the appellant's use of the term "may" constitutes speculation. It is categorically submitted before this Hon'ble NGT that the processes employed by R/1 for Environmental Impact Assessment (EIA), including the development of Environmental Management Plans (EMPs), are fundamentally based on predictive analytics. Therefore, any characterization of the appellant's submissions as speculative is not only unfounded but entirely untenable.

4. At Paragraph No. 25, R/1 has contended that the WHO report referred to in the appeal has not been cited. This contention is unfounded, as the appeal clearly contains a hyperlink in its contents section, providing direct access to the report for reference. Such an approach is in line with ease of access to supporting materials.
5. Furthermore, at Page 107, Paragraph (x) of the Reply Affidavit filed by R/1, it is explicitly stated that the monitoring of Chromium (Cr) was a required parameter. However, neither R/1 nor R/2 has provided any data pertaining to Chromium monitoring, nor have they offered any explanation for this glaring omission. This failure reflects a serious dereliction of duty on the part of the respondents and demonstrates a reckless disregard for the accuracy and integrity of baseline environmental data collection. Such negligence undermines the reliability of the EIA process and highlights a pattern of casual and indifferent conduct by the respondents in addressing critical environmental issues.
6. As most humbly submitted in Paragraph 5 above, on the same ground, the claims made by Respondent No. 2 (hereinafter referred to as R/2) at Point No. 6 of its affidavit in opposition, signed on 3rd October 2024, are completely without merit. Furthermore, in the same paragraph, R/2 has incorrectly asserted that "it is not the case of the Appellant that the objection raised by the Appellant was not considered and that therefore rules of natural justice have not been followed." In the present appeal, at Paragraph 5.6(a), it is unequivocally submitted before this Hon'ble NGT that the documents uploaded on the PARIVESH Portal clearly show that the issue was deliberated upon by the Expert Appraisal Committee (EAC) on 24.02.2024 under Agenda 7.14. The Appellant presumed the discussion was triggered by the complaint, as no names were mentioned in the proceedings. Additionally, at 5.6(b), it is submitted that the Minutes of Meeting (MoM) of the EAC explicitly state in the third paragraph that "The Committee noted that the allegation made by the complainant is without any documentary proof to support his argument." Further, the EAC has stated that "In the absence of any proof by the complainant, the Ministry may take further necessary action as per the recommendation already given by the EAC". Neither the EAC nor R/2 took steps to verify the documentary proof supporting the allegation. This was duly countered in the Appellant's email dated 12th March 2024, already submitted at Page 42 of the instant Appeal, which remained unanswered. Later it was understood that meanwhile, the EAC had processed the Environmental Clearance under challenge in the instant appeal. Therefore, the proceedings amounted to a

one-sided hearing, thus failing to uphold the principles of natural justice. This also devoids the claim of R/2, at Point No. 6 of its affidavit in opposition, that the Appellant's objection was duly addressed in the EAC meeting of 24.02.2024 with specific reasons provided as to why the objection was baseless and meritless. Moreover, this issue is unnecessarily highlighted as it is not at all a ground for the present appeal and is therefore redundant.

7. At Point No. 7 of its affidavit in opposition, R/2 erroneously asserts that "it is needless to mention that the jurisdiction vested with the Hon'ble NGT is limited to reviewing the decision-making process, rather than determining the correctness of the decision taken by Respondent No. 1." The Appellant submits that the instant appeal directly concerns the decision-making process. Furthermore, R/2 is misleading the Hon'ble NGT by mischaracterizing the Appellant's position on the public hearing issue, as the Appellant has not contested the public hearing itself.
8. At Paragraph 18, R/2 argues that the Appellant's primary grievance concerns the grant of Environmental Clearance, based on inadequate baseline data, particularly non-compliance of Benzene test results with IS: 5182 (P-11): 2006 standards, and the MoEF's failure to consider these and other technical aspects. However, R/2 fails to provide any new justification beyond the deliberations of the Expert Appraisal Committee at the complaint stage, which are now challenged in the appeal. R/2's attempt to downplay this deficiency by asserting that the absence of the NABET or NABL logo on the test reports does not invalidate them is misguided. The NABL accreditation, indicated by the symbol or mention in the report, is essential for valid and audited results. Without this, the reports are not assessed during NABL's accreditation renewal process. R/2's vague explanation for the non-submission of properly accredited test reports does not adequately address the critical issue.
9. The Appellant vehemently objects to the submissions made by R/2 at Paragraph 19. On the contrary, as a large-scale enterprise, R/2 should possess constructive knowledge of the Environmental Clearance requirements and must not seek to circumvent those obligations by abusing the process of law. The statements made by R/2 are harassing and disrespectful to the Appellant, who merely seeks a fair and impartial assessment in accordance with the norms established by R/1. Baseline data is the cornerstone of Environmental Impact Assessment (EIA), and the Appellant's concerns regarding non-compliance cannot be dismissed as frivolous. These are grave

matters that R/2 was obligated to follow. To the contrary, it is R/2, not the Appellant, that has displayed a consistent pattern of delay and non-compliance with the orders of the Hon'ble NGT, including the delayed filing of its affidavit. The affidavit under discussion further reveals that R/2's case was deferred by R/1 or the EAC due to the lack of essential information.

10. Paragraph 20 of R/2's affidavit is vague and fails to adequately address the core issue, which is one of the three primary grounds of the instant appeal. The Appellant has already countered this matter in its email dated March 12, 2024, sent to the Expert Appraisal Committee (EAC), where the Appellant raised specific concerns regarding the testing of Benzene. The Appellant noted that at Page 313 of the documents, it was stated, "As mentioned above, the testing of Benzene was done as per IS: 5182 (P-11): 2006 RA: 2017 Standards using the GC-FID Method" and that the Indian Standard Methods for Measurement of Air Pollution were attached as Annexure-2. However, the Appellant pointed out that IS 5182 Part 11 prescribes three distinct methods, and the suo-motu statement provided by R/2 fails to clarify which specific method was followed.

Furthermore, it is crucial to examine the sample trail, sample preservation, time lapse between sampling and testing, and the accompanying back-end data such as peaks/graphs. If such documentation and evidence are indeed enclosed in Annexure-2, as referenced, the Appellant respectfully requests that they be provided. Additionally, the Appellant highlighted that IS 5182 Part 11 does not mention the Limit of Quantification (LOQ) as stated in the laboratory reports and EAC's Minutes of Meeting (MoM). The Appellant finds the statement "This is to confirm that the baseline data generation and its testing was done as per the approved protocols for ambient air quality monitoring" to be unconvincing and insufficient. The method specified in the standard refers to detection limits, which depend on various factors such as:

- (a) Sample storage conditions
- (b) Injection volume
- (c) Minimum artifact levels
- (d) GC detector selection
- (e) Volume of air sampled

The volume of air sampled, in turn, is influenced by several variables, including SSVS, pump flow rate limitations, and time-weighted average monitoring time constraints.

11. At Point No. 24 of the affidavit, R/2 has made a false statement regarding the primary baseline data on environmental air quality for Chromium (Cr), as no data has been submitted in relation to this parameter.
12. At Paragraph 26 of the affidavit in opposition (page 738), R/2 has clearly accepted its inability or its EIA consultant's or laboratory's inability to measure extremely low levels of benzene. As outlined in IS 5182 (referenced on page 76 of the appeal), under the Performance Criteria - Detection Limit, the system must be capable of detecting pollutants at a concentration of 0.5 parts per billion (ppb). However, R/2 has failed to address this critical standard. This submission by R/2 directly contradicts the EAC's statement (page 47 of the appeal), which asserts, "This is to confirm that the baseline data generation and its testing was done as per the approved Protocols for Ambient Air Quality Monitoring." Consequently, R/2's claim that "the inability to measure extremely low levels of benzene has got nothing to do with compliance or non-compliance with relevant Indian Standards IS 5182 (Part 11)" is untenable and exposes an attempt to mislead the Hon'ble NGT.
13. At Paragraph 27 of the affidavit in opposition, R/2 has submitted reports from another laboratory, claiming to be a "NABL Accredited Laboratory." These reports use the term "BDL: Below Detection Limit," as highlighted by the Appellant. However, these very reports also state that Benzene was "Not Detected." The Appellant, while refraining from commenting on the acceptability of the reports or their findings due to the lack of critical details regarding the test method, detection limits, and the validity of the term "Not Detected", respectfully submits that the absence of such details renders these reports unreliable. Moreover, the Appellant finds it deeply concerning that R/2 seems to be shielding the laboratory by referencing results reported by the Continuous Ambient Air Quality Monitoring Stations (CAAQMS). The Appellant refrains from making any conclusive statements on the acceptability of the CAAQMS results. However, it is crucial to note that, in the absence of transparency regarding the calibration methods and standards applied to ensure the data's quality, the integrity and validity of the results remain highly questionable.

14. In Paragraph 28, R/2 has made baseless allegations before the Hon'ble NGT, seeking the imposition of costs against the Appellant, based solely on presumptions regarding sampling, transportation, preservation, and handling protocols as per the Quality Standard Procedures (QSPs) of the laboratory. However, R/2 has failed to submit any documentary evidence or proof from the laboratory, specifically the trailing documents that are essential to verify the authenticity of the report. The Appellant had previously highlighted the absence of such documents in the email dated March 12, 2024, as well as in Paragraph 10 above. Instead, R/2 has made a vague assertion that NABL, when granting accreditation, verifies the completeness and implementation of QSPs. This statement is insufficient and unsubstantiated. R/2 must specifically prove that the test reports in question, which were not claimed under NABL in the instant case, have undergone audit or assessment by NABL assessors, as required by the accreditation process.
15. In summation, R/1's Reply Affidavit is devoid of substantive merit and fails to challenge the grounds of the Appeal and the IA. R/2's affidavit in opposition fails to address the key issues raised in the Appellant's Appeal. The lack of chromium monitoring data and false statements undermines the credibility of R/2's submission. Additionally, R/2 has accepted its inability to measure extremely low levels of benzene, further weakening its position.
16. Accordingly, the Appellant most respectfully submits that the prayers made in the Appeal and the accompanying Interlocutory Application (IA) be made absolute, and this Hon'ble Tribunal may graciously pass appropriate orders as deemed fit and proper.

Sanjaya Kumar Mishra
(Appellant)

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AFFIDAVIT

I, Sanjaya Kumar Mishra, Advocate, S/o Shri Nilamani Mishra, Maszid Chowk, Tikrapara, Balangir 767001 (Odisha), do hereby solemnly affirm and declare as under: -

- 1) That I am the Appellant in the Appeal No. 07 (EZ) OF 2024 with IA No. 38 (EZ) OF 2024.
- 2) That I am fully conversant with the fact of the case and therefore, I am fully competent to sign and swear this Rejoinder Affidavit.
- 3) That the contents of the accompanying Rejoinder be read as part and parcel of this Affidavit as the same are not repeated herewith for the sake of brevity.

Sanjaya Kumar Mishra
DEPONENT

VERIFICATION:

Verified at Balangir on this 28 Day of November 2024 that the contents of the above Affidavit are true and correct to the best of my knowledge and nothing material has been concealed there from.

Sanjaya Kumar Mishra
DEPONENT

ATTESTED

[Signature]
Notary Public, Bagru Jaipur

28 NOV 2024



REJOINDER IN APPEAL NO. 07 (EZ) OF 2024 [IA No. 38 (EZ) OF 2024]

1 message

S K Mishra <sanjayakmishra@gmail.com>

29 November 2024 at 14:05

To: Amrita Pandey <amritalegal@gmail.com>, poddar_associates2005@yahoo.com

Madam/ Sir,
Please find the attachment.

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Warm regards,
Sanjaya K. Mishra

Environmental Lawyer (AIBE Certified)

Mobile: 9818326647 | Alternate Email: sanjayakmishra@hotmail.com

Odisha Communication: West Wing, 1st Floor, Priya Nilayam, Masjid Chowk, Tikrapara, Balangir 767001

**Rejoinder in Appeal No. 7 (EZ) 2024 and IA 38 (EZ) 2024.pdf**

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